

## REMARKS

In the October 5, 2006 office action, the examiner used the same references that were previously used in the prior office action, namely Brewer et al and Dockser.

Notwithstanding the insistence by the examiner that Brewer et al disclose deep packet inspection, it is abundantly clear from a reading of the reference that the only inspection that is carried out is a packet header inspection. The applicants clearly specify at page 4, line 21, and page 5, lines 1 and 2, that “....each frame will be deemed to have a ‘header’ field 14 and a ‘data’ field 16.” It is exceedingly difficult for applicants to understand the logic of equating the superficial header inspection used by Brewer et al with the packet content or “data” inspection utilized by applicants. The attempt to equate the two falls short of providing a convincing argument of obviousness.

On page 3 of the rejection, under element a), line 3, it is stated “forwarding Engines 13 inspect the **packet headers** and performs a filtering function...” Likewise in element b), lines 3 and 4, Brewer et al state “Packet Forwarding Engines 13 inspect the **packet headers** and performs a filtering function...” On the same page of the rejection under element c), at line 4, the examiner quotes from Brewer et al “Packet forwarding engines 13 inspect the **packet headers** and performs a filtering function...” Yet, despite the clear and unambiguous language quoted from the reference, the examiner then interprets this language to mean, not the processing of packet headers, but instead performing its own deep packet processing of the data contained in the frame. This interpretation completely ignores the clearly stated meaning of the language of Brewer et al. Applicants respectfully submit that the meaning of packet headers is not sufficiently

elastic so as to be stretched to encompass the meaning attributed to it by the examiner. Accordingly, this rejection of claim 21 should be withdrawn.

The rejection of method claim 22 follows many of the same contours of the rejection of system claim 21 insofar as the examiner continues to adhere to the same arguments that an inspection of a packet header is the same as an inspection of the data embedded in the body of the packet. Again, as before, applicants continue to submit that the two are separate and distinct. This current invention enables the applicants to assign packets with a higher degree of reliability because of the more intelligent inspection based upon the greater availability of data on which to base a decision.

These two remaining independent claims confirm that the input and the output buffers both are contained in a Data Moving Unit. As noted at page 4, lines 17-19 of the specification, this unit serves as an I/O interface for the frames and is responsible for receiving and transmitting frames. The claims unequivocally specify that the frames are forwarded to their destinations in the same sequence in which they are received for processing. Respectfully, applicants submit that this feature is absent in the prior art teachings cited and applied by the examiner.

These two claims clearly show that the search engines are assigned the frames in accordance with the type of processing that is to be conducted on the frame. This feature is described in the second full paragraph on page 7 of applicants' specification as follows:

*“The invention contemplates that the core engines can all be the same type of engine; for example, all having the capacity for performing deep searches. On the other hand, some core engines can do searching, others encrypt/decrypt and others compress the data. They can be used in any combination. When multiple operations are to be conducted on a frame, the frame is transferred from the core memory of one engine to the core memory of another engine. The transfer typically is performed through the*

*arbitration/sequencing unit. However, it should also be understood that if separate paths are provided between engines, the packets can be transferred directly from one core memory to another without the necessity of going through the arbitration/sequence unit."*

Furthermore, it should be noted specifically that element f) of claim 21 and step f) of claim 22 clearly spell out that the frames from the output buffer are sequenced in the same order as they are received in the input buffer. Therefore, the examiner's contention that this sequencing carries no weight because it appears only in the preamble of these two claims cannot be supported and should be withdrawn. Because this feature serves to distinguish over the prior art and is not rendered obvious by the respective or combined teachings of Brewer et al and Dockser, these two claims should be considered to be in condition for immediate allowance.

Brewer et al relate solely to maintaining router packet control. The reference does not perform any service in the packets or frames such as encryption or compression. The filtering function discussed in this reference is performed solely on the frame header, and does not constitute substantive deep packet processing on the frame. It merely determines from the header whether the frame destination is local or external. As covered on page 1 of the present application, this activity is superficial and does not constitute 'deep-packet processing' by going beyond the header into the data itself.

Furthermore, it should be noted that the packet forwarding engine of Brewer et al is equivalent to the Frame Header Processing Unit of applicants' invention. It inspects the frame header but does not do any deep processing on the data in the frame. The examiner's interpretation of the filtering function of the reference as a deep packet process is, respectfully, categorically incorrect. Applicants have now amended the two remaining claims to indicate that the processing done by the core engines is performed on

the frame data, and not the header. This further distinguishes the invention over the teachings of the references.

Yet an additional distinction resides in the claim limitation that the core engines include an associated memory for storing a frame assigned to the engine until it can be processed. Brewer et al do not appear to contain such a limitation.

Although the examiner has combined the teachings of Brewer et al with the teachings of Dockser to show that larger buffer size has an advantage over a smaller size, it should be pointed out that the combined teachings of these two references does not suggest that the input and the output buffer are contained within a singular Data Moving Unit. This limitation is included in claims 21 and 22, and serves to further distinguish applicants' claimed invention over the applied prior art. Applicants respectfully submit that the combined teaching of the two references does not rise to the level of obviousness that is required by the Patent Office or by the courts. One cannot pick and choose language from two references that are only peripherally related to support such a rejection while ignoring other language in the references that teach away from such a finding. In the case of In re Wesslau, 353 F. 2d 238 (CCPA 1965), the court held:

“It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” (emphasis original)

Similarly, in Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc. et al, 796 F.2d 443, 230 U.S.P.Q 416 (Fed. Cir. 1986), the Federal Circuit held: “The ... court failed to consider the Caddell reference in its entirety and thereby ignored the portions of the reference that argued against obviousness. (citations omitted)”

Thus, it is clear that when references are used in a §103 citation, their entire teaching must be used. One may not pick and choose from a given reference only those portions which support an espoused position, and ignore those portions which do not.

Furthermore, applicants respectfully submit that there is no suggestion, teaching or motivation to combine the teachings of Brewer et al and Dockser to establish the requisite basis for the rejection based on obviousness. The Federal Circuit Court has consistently held that when obviousness is based on the teachings of multiple prior art references, some “suggestion, teaching, or motivation” must be established that would lead a person of ordinary skill in the art to combine the relevant prior art teachings in the manner claimed. See, for example, Tec Air, Inc. v. Denso Mfg. Mich., Inc., 192 F.3d 1353, 1359-60. (Fed. Cir. 1999). This criterion has been used by the Federal Circuit for the past quarter of a century, and has been consistently applied or acknowledged by numerous panels containing every currently active member of the court.

This ‘suggestion to combine’ requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness. See Yamanouchi Pharmaceutical Co., Ltd. v. Danbury Pharacal, Inc., 231 F. 3d 1339, 1343 (Fed Cir. 2000). By employing this safeguard, the claims in question cannot be used as a guide through plural prior art references, combining the right references in the right way so as to deny the patentability or enforceability of the claims. Accordingly, the rejection of claims 21 and 22 as obvious should be withdrawn.

## CONCLUSION

Applicants respectfully submit that the amendment to the claims now places the application in condition for immediate allowance. Accordingly, amended claims 21 and 22, the only two remaining in the application, should, therefore, be deemed to be allowable. The amendments merely serve to clarify the language of the claims, and do not introduce any additional features which would require any further searching by the examiner. Accordingly, there should be no need to search for or cite additional references for purposes of any additional action by the Patent Office. Instead, the examiner is respectfully requested to take such action as is consistent with this amendment.

If there are any minor matters that can easily be resolved by phone or by email, the examiner is encouraged to contact the undersigned as a step toward resolution and allowance.

Reconsideration and allowance are now respectfully requested.

Respectfully submitted,

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